

NEW TIF LAW 2004

Acts 126 (SB 305), 127 (SB 306) & ____ (SB 428), Laws of 2003

April, 2004

(This summary was prepared by Peter Thillman & Jim Hough of WEDA and Mike Harrigan of Ehlers & Associates. The chief authors of the legislation were Senator Cathy Stepp and Representative Mickey Lehman who developed the TIF legislation in conjunction with WEDA's TIF working group and a coalition including the League of Municipalities, Alliance of Cities, Wisconsin Builders Association and Wisconsin Realtors Association.)

Following is a summary of the major provisions included in this landmark economic development legislation adopted by the 2003-04 Wisconsin Legislature and signed into law by Governor Jim Doyle.

- **Provides guidance regarding qualifications of Joint Review Board members.** Joint Review Board members often have not had the necessary expertise to make informed decisions for the taxing entities. The new law gives the local taxing jurisdictions guidance when naming their appointees. The intent is to appoint Joint Review Board members who have a background in finance or strong knowledge in local government finance, thereby increasing the sophistication of the board and protecting the taxpayer.
- **Allows newly platted residential development to be TIF eligible.** Different communities have different development needs. When residential projects are not TIF eligible, the purpose of smart growth is defeated. New commercial/industrial development is enhanced and strengthened by incorporating residential development in close proximity, thereby reducing sprawl and increasing tax base density. In order to accomplish this goal a new category was created called "Mixed Use," whereby 50% of the district must be suitable for industrial, commercial or residential projects and no more than 35% of the project may be for newly platted residential development. The proposal further provides that the residential component be restricted by requiring that there be a density limit of no less than 3 units per acre; or, be a development which is a "traditional neighborhood design"; or, be a development which is a "conservation subdivision." ("Traditional neighborhood design" and "conservation subdivision" are statutorily defined under the Smart Growth provisions of Wisconsin law.) This removes the existing prohibition on residential development in TIFs and makes residential project expenses TIF eligible, if the project complies with the above listed restrictions. (Newly platted residential was a TIF eligible expense prior to 1995. The new enactment returns the law to its previous form but with the 35% limitation.)
- **Eliminates the existing 7% valuation benchmark and increase the 5% to 12%.** Communities that operate successful TIF districts have been punished if they are too successful. Previous law did not allow them to create a new district until the TIF valuation was back to the 5% / 7% criteria. This had the effect of impeding future economic growth, as communities were required to wait before taking on another project. This resulted in the potential forfeiture of economic opportunities for both the local community and the state. Raising the 5% standard to 12% retains the performance burden on the local community, but still allows for economic development opportunities. Additionally, this change will help economic development efforts in small, rural and low-value communities that often become "TIF'd out" after one project.

- **Permits Donor TIFs to aid redevelopment, affordable housing or environmental remediation.** One of the past TIF law changes that had the greatest negative effect on redevelopment TIFs was the elimination of the Donor TIF. Original intent of TIF law included redevelopment, affordable housing and, more recently, environmental remediation. Unfortunately, developed property is at a significant TIF disadvantage because the baseline is established at a developed level putting redevelopment TIFs on an uneven playing field. Many of these projects require significant investment in demolition and environmental remediation just to make the properties ready for redevelopment. Such redevelopment may not increase the baseline significantly, but does add significant non-tax base value to the community. These projects are the original intent of TIF, but they have been more and more difficult to complete. This law change allows for a successful TIF to donate excess current year revenue above and beyond current debt service to a TIF district that was established for redevelopment, affordable housing, or environmental remediation purposes, thereby fulfilling the original "spirit" of the original TIF law.
- **Alters the lifespan of TIDs created between September 30, 1995 and October 1, 2004; establishes the lifespan of industrial and redevelopment TIDs created after October 1, 2004; and, allows for extensions upon timely, documented requests.** The new law expands the life of redevelopment TIDs created between September 30, 1995 and October 1, 2004 from 23 to 27 years and allows for a 4 year extension. Redevelopment TIDs created after October 1, 2004 will have a lifespan of 27 years with the availability of a 3 year extension. There is no change to the lifespan of existing industrial TIDs but industrial TIDs created after October 1, 2004 will have a lifespan of 20 years with the ability to apply for a 3 year extension. The inherent economic disadvantage contained in redevelopment TIFs is again at the heart of the change. One of the original intents of TIF law was to encourage urban renewal. But as explained in the previous point, redevelopment TIFs have a relatively thin return on investment. Extending the TIF life makes redevelopment TIFs more economically feasible. The costs in a greenfield and redevelopment area are basically the same, but redevelopment does not provide the same return to the tax base as a greenfield TIF. Greenfield development begins at general agriculture use assessment while redevelopment areas are already fully assessed, hence the uneven playing field. The Joint Review Board will be **required** to grant the extension if an independent audit demonstrates that the additional time is needed to pay the project costs. A city or village will be required to notify DOR at least one year before a TID is required to terminate if a Joint Review Board approves an extension. Failure to provide such notice would allow the department to deny the extension.
- **Repeals the seven year expenditure rule and allow for expenditures up to 5 years before the termination date of the TID.** Allowing local municipalities the ability to invest in the TIF districts over the districts' life permits the local community the flexibility to address economic development opportunities. The municipality and Wisconsin win if a community can, for example, make the necessary TIF investments in year 15 that result in new jobs and tax base to the area, period. Prior to this change, communities had to forfeit these economic development opportunities.
- **Allows for up to four boundary amendments throughout the life of a TIF.** This is a corollary to the expenditures throughout the life of the TIF. If a TIF can make expenditures up to and through years 15 (post 10/1/04 industrial and mixed use), 18 (pre 10/1/04 industrial) and 22 (any blight or redevelopment), it follows that the TIF boundaries must also be able to be amended. The new law also specifically grants the ability to subtract territory.
- **Provides "Substantial Compliance/Substantial Justice."** This allows DOR to approve a new TIF even if there is some error as long as it does not affect substantial justice. This change will reduce, and hopefully eliminate, the number of annual legislative requests to approve individual TIF districts which made minor errors in the process.
- **Provides that "vacant land" does not include property that is contaminated by environmental pollution and, therefore, does not impact the "vacancy cap."**

- Allows the Joint Review Board to approve the resolution creating a TID at any time within the 30 days after receiving the resolution.
- Allows a member of the elementary school half of the school district's vote where the establishment of a Joint Review Board is in a Union High School District.
- Where a TIF project plan includes possible grants and loans to developers, requires that language be incorporated into the public hearing notice and a copy of any future development agreement be provided to the taxing entities. Development agreements will be a requirement.
- Requires that all affected taxing entities, including Lake Districts, Sanitary Districts, etc. are notified of the creation of TID by letter. Failure to do so will not, however, affect substantial compliance.
- Newly annexed lands must wait 3 years or there must be a cooperative boundary agreement in place or the municipality must pay 5 years of the town's loss in base taxes (TIF eligible expenses) before those areas are TIF eligible.
- Requires the DOR, in certifying the district, to use the most recent reported equalized value data at the time the governing body approved the district rather than waiting until after August 15.
- Authorizes DOR to impose a fee of \$1000 on a city or village to determine or redetermine the tax incremental base of a TID. Revenues collected are to be used by DOR to provide staff and administrative services to TIDs.
- Requires DOR to prepare and update a TIF manual.
- Joint Review Board Members may request DOR review. Before a Joint Review Board submits its decision on a TIF proposal submitted by a city or village, a majority of the members of the Board may request DOR to review the objective facts in the documents submitted to the Board. DOR is required to investigate the specific fact or item alleged to be incomplete or inaccurate. If DOR finds factual inaccuracies or noncompliance with other statutory requirements, DOR must return to the city or village for correction and resubmittal. The city or village is not, however, required to correct or resubmit.
- Requires the Joint Review Board to submit its decision within 7 days after the Board acts. If the Board requests a DOR review, the Board must submit its decision within 10 working days after receipt of DOR's response. If the city or village resubmits its proposal within the 10 days, the Board shall submit its decision not later than 10 days after receiving the resubmitted proposal.